



February 20, 2019

Mary L. Kendall
Inspector General
U.S. Department of the Interior
Office of the Inspector General
1849 C Street, NW - Mail Stop 4428
Washington, D.C. 20240

Dear Inspector General Kendall:

The Campaign Legal Center (“CLC”) writes to request an investigation by your office into several senior members of the Department of the Interior for violations of their ethics pledges. We respectfully request that the Inspector General conduct a thorough investigation of the matters addressed in this complaint and advise the public of all findings and conclusions.

Upon entering public service, all full-time political appointees sign a binding ethics pledge obligated by Executive Order 13770, in which they agree to recuse from certain matters involving former employers or clients, and affirm that the pledge’s ethical obligations “are binding on me and are enforceable under law.”¹

Under the ethics pledge, all full-time political appointees cannot participate for two years after appointment in particular matters involving specific parties in which a former employer or former client is or represents a party.² Importantly, this restriction bars appointees from participating in closed meetings or communications

¹ Exec. Order No. 13770, 82 Fed. Reg. 9333, § 1 (Jan. 28, 2017) (“Ethics Pledge”).

² *Id.* § 1(6).

related to their official duties with a former employer or client,³ and from open meetings with a former employer or client that are focused on particular matters involving specific parties.⁴ The purpose of this restriction is “to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view.”⁵ Additionally, if an appointee served as a registered lobbyist at any time during the two years prior to appointment, the appointee is subject to a two-year recusal obligation from particular matters on which the appointee lobbied.⁶ The appointee also cannot participate in the specific issue area in which a matter he or she lobbied falls.⁷

Several political appointees at Interior appear to have violated these provisions, which are specifically designed to prevent public officials from using their positions to favor former employers or lobbying clients.⁸

Taken together, the violations outlined below suggest a disturbing pattern of misconduct across the Department of the Interior that warrants your office’s immediate attention.

I. Doug Domenech

³ *Id.* § 2(s). A “former employer” for purposes of the ethics pledge applies to any person for whom the appointee has served as an employee within the two years prior to the date of appointment. *Id.* § 2(j).

⁴ *Id.* at § 2(s).

⁵ U.S. OFFICE OF GOV’T ETHICS, DAEOfgram DO-09-011, ETHICS PLEDGE: REVOLVING DOOR BAN—ALL APPOINTEES ENTERING GOVERNMENT 2 (2009), <https://bit.ly/2MUU21C> (“OGE DO-09-011”). Pursuant to the Office of Government Ethics (“OGE”) Legal Advisories 17-02 and 17-03, this memorandum applies to Executive Order 13770 and the ethics pledge currently in effect.

⁶ Ethics Pledge, *supra* note 1, § 1(7).

⁷ *Id.* § 1(7).

⁸ All employees named in this complaint are full-time political appointees required to sign the Executive Order 13770 ethics pledge, and Interior has told OGE that all such full-time political appointees have signed the pledge. In Interior’s response to OGE’s CY 2017 ethics questionnaire, Interior only reported two employees appointed in 2017 who did not sign the ethics pledge. Those employees were “appointed without break in service after serving in another position for which the Ethics Pledge was already signed.” Since no appointees named in this complaint fall under that description, it appears that they all have signed the ethics pledge. U.S. OFFICE OF GOV’T ETHICS, DEPT’ OF THE INTERIOR RESPONSE TO 2017 AGENCY ETHICS PROGRAM QUESTIONNAIRE, <https://bit.ly/2DKrLYz>; see also U.S. DEPT’ OF INTERIOR, ETHICS PLEDGE OVERVIEW, <https://on.doi.gov/2RMKlxi> (noting that signing the Executive Order 13770 ethics pledge is required by every full-time political appointee upon accepting the political appointment). The complaint cites to those signed ethics pledges that are publicly available, but upon information and belief, all employees named in this complaint have signed a pledge.

Doug Domenech entered the federal government on January 20, 2017 as Interior’s Senior White House Advisor, and on September 18, 2017, he became Assistant Secretary for Insular and International Affairs. Before entering government service, Domenech was the Director for the Fueling Freedom Project at the Texas Public Policy Foundation (“TPPF”), a position he held from March 2015 until January 2017.⁹ TPPF is a conservative think tank that, among other things, is engaged in litigation against Interior.¹⁰

Domenech entered government as a senior political appointee, so likely first signed the Executive Order 13770 ethics pledge as Senior White House Advisor;¹¹ records show that he later signed the pledge on September 5, 2017,¹² shortly before taking his new position. In signing the pledge, he agreed to recuse “for a period of 2 years from the date of my appointment” from any closed meetings with a former employer (including TPPF) related to his official duties, and from open meetings with a former employer focused on particular matters involving specific parties.¹³

Domenech violated this provision by participating in two back-to-back meetings with his former employer, TPPF, to discuss TPPF’s litigation against Interior. Litigation constitutes a particular matter involving specific parties.¹⁴

⁹ U.S. OFFICE OF GOV’T ETHICS, EXECUTIVE BRANCH PERSONNEL, PUBLIC FINANCIAL DISCLOSURE REPORT (OGE FORM 278E) 3 (Part 1, Line 1) (May 11, 2017), <https://bit.ly/2HG7172> (nominee financial disclosure report of Doug Domenech).

¹⁰ See, e.g., Robert Henneke, *The Endangered Species Act is an ineffective regulatory burden*, THE HILL (Dec. 15, 2017) <https://bit.ly/2UsGtJ8> (discussing TPPF’s lawsuit challenging the constitutionality of the Endangered Species Act); Press Release, TPPF, TPPF launches litigation center (May 12, 2015), <https://bit.ly/2BdVdnW> (describing its litigation as a tool to oppose “federal abuse and overreach in areas of environmental, private property, and business autonomy rights”).

¹¹ See *supra* note 8; see also OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF INTERIOR, REASSIGNMENT OF SENIOR EXECUTIVES AT THE U.S. DEPARTMENT OF THE INTERIOR (REPORT NO. 2017-ER-061) 10 (2018), <https://bit.ly/2Uy8YWT> (describing the White House Senior Advisor role as a politically-appointed role).

¹² U.S. DEP’T OF INTERIOR, SIGNED ETHICS PLEDGES 20, <https://bit.ly/2TqcXUj> (signed ethics pledge of Doug Domenech).

¹³ *Id.* (emphasis added); see also Ethics Pledge, *supra* note 1, §§ 1(6), 2(s) (“Particular matter involving specific parties’ shall . . . include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.”).

¹⁴ “Examples of particular matters involving specific parties include contracts, grants, licenses, product approval applications, investigations, and litigation. . . . [T]he term [particular matter] covers two categories of matters: (1) those that involve specific parties . . . and (2) those that do not involve specific parties but at least focus on the interests of a discrete and identifiable class of

According to Domenech's official calendar, on April 6, 2017, he participated in a 30-minute meeting titled "Meeting with Rob Hennek, Texas Public Policy Foundation on Bone Harvestman Cave Spider,"¹⁵ whose inclusion on the Endangered Species list has been the subject of litigation between TPPF and Interior since 2015.¹⁶ Immediately following the discussion of that topic, Domenech's calendar showed he participated in another 30-minute meeting with his former employer to discuss the "Red River Case,"¹⁷ a property dispute that was being litigated between TPPF and Interior's Bureau of Land Management at the time.¹⁸ Six months after that meeting, the government settled the Red River lawsuit, with TPPF calling the settlement a "major win."¹⁹

The only participants in the meetings were TPPF's Hennek, Domenech, and other Interior employees, so the meetings were not open to all interested parties.²⁰ Even if they were, Domenech's meetings with his former employer would still violate the ethics pledge because the meetings focused on particular matters involving specific parties.

persons, such as a particular industry or profession." *"Particular Matter Involving Specific Parties," "Particular Matter," and "Matter,"* U.S. OFFICE OF GOV'T ETHICS, DAEOfgram DO-06-029 4, 8 (2006), <https://bit.ly/2SvO78f>.

¹⁵ U.S. DEPT OF INTERIOR, DOUGLAS DOMENECH MARCH-OCTOBER 2017 OFFICIAL CALENDAR 23, <https://on.doi.gov/2RW0nj0> (noting "Meeting with Rob Hennek, Texas Public Policy Foundation on Bone Harvestman Cave Spider" on April 6, 2017). The other individuals listed as attending the meeting, according to Domenech's calendar, were Interior employees. *Id.* The meeting was therefore not open to all interested parties.

¹⁶ See Press Release, TPPF, TPPF Files Suit Over Federal Regulation of Bone Cave Harvestman Arachnid (Dec. 16, 2015), <https://www.texaspolicy.com/press/tppf-files-suit-over-federal-regulation-of-bone-cave-harvestman-arachnid>; Henneke, *supra* note 10.

¹⁷ *Id.* at 24 (noting "Meeting with Rob Hennek re: Red River Case," on April 6, 2017). The other individuals listed as attending the meeting, according to Domenech's calendar, were Interior employees. *Id.* The meeting was therefore not open to all interested parties.

¹⁸ See Press Release, TPPF, TPPF Files Lawsuit Against Bureau of Land Management Challenging Seizure of Private Land Along Red River (Nov. 17, 2015), <https://www.texaspolicy.com/press/tppf-files-lawsuit-against-bureau-of-land-management-challenging-seizure-of-private-land-along-red-river>; see also Jimmy Tobias, *Interior department faces ethics queries as official meets with Koch-linked group*, THE GUARDIAN (May 14, 2018), <https://bit.ly/2IhLN0s>.

¹⁹ Press Release, TPPF, Texas Parties Win in Private Property Rights Lawsuit (Nov. 8, 2017), <https://www.texaspolicy.com/press/texas-parties-win-in-red-river-private-property-rights-lawsuit>.

²⁰ See *supra* notes 15-16; see also OGE DO-09-011, *supra* note 5, at 2 (describing "open to all interested parties" to require the inclusion of a "multiplicity or parties," such as "five or more stakeholders").

Domenech may also have violated the former employer provision of the ethics pledge at other times. His official calendar indicates he attended, via video call, a “TPPF Energy and Climate Summit” on November 30, 2017.²¹ Your office should conduct a review to determine whether Domenech’s participation in this meeting was focused on particular matters involving specific parties and pertained to his official duties, and whether he participated in any other similar meetings with his former employer.²²

II. Benjamin Cassidy

Benjamin Cassidy was appointed the Interior Department’s Senior Deputy Director for Intergovernmental and External Affairs on October 1, 2017. Prior to joining Interior, Cassidy was a lobbyist for the National Rifle Association (“NRA”), a gun rights advocacy group, for seven years.²³

Since Cassidy is a senior political appointee, it is likely that he signed the Executive Order 13770 ethics pledge,²⁴ and agreed to recuse from particular matters involving specific parties that are directly and substantially related to his former employer.²⁵ Because Cassidy was a registered lobbyist for the NRA in the two years prior to his appointment, he also agreed to not participate in either any particular matter on which he lobbied during those two years, or in the specific issue area in which that particular matter falls.²⁶ A “specific issue area” for purposes of the lobbying provision of the pledge means a “particular matter of general applicability.”²⁷ A “particular matter of general applicability” means a

²¹ U.S. DEPT OF INTERIOR, DOUGLAS DOMENECH NOVEMBER 2017-JANUARY 2018 OFFICIAL CALENDAR 14, <https://bit.ly/2MKe3ri> (noting “All day TPPF Energy and Climate Summit” on November 30, 2017).

²² An Interior spokeswoman has stated that these violations have been raised with agency ethics officials. Tobias, *supra* note 18.

²³ Resume of Benjamin Cassidy, <https://bit.ly/2BdcZrt>; *see also* National Rifle Association of America Lobbying Disclosure Reports, *infra* note 29.

²⁴ *See supra* note 8.

²⁵ Ethics Pledge, *supra* note 1, §§ 1(6), (2)(s).

²⁶ *Id.* § 1(7).

²⁷ OFFICE OF GOV’T ETHICS, LA-17-03, GUIDANCE ON EXECUTIVE ORDER 13770 1 (2017), <https://bit.ly/2FZRhv0>. OGE provides the following example:

An appointee was a registered lobbyist during the two-year period before she entered government. In that capacity, she lobbied her agency against a proposed regulation focused on a specific industry. Her lobbying was limited to a specific section of the regulation affecting her client. Her recusal obligation as an appointee is not limited to

particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not necessarily involve specific parties.²⁸

In 2016 and 2017, while lobbying on behalf of the NRA, Cassidy lobbied Congress on multiple pieces of legislation, and also lobbied the Department of the Interior and its bureaus, including the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service, and National Park Service, according to the NRA's lobbying disclosure reports.²⁹ He lobbied on legislation dealing with animal trophy imports and conservation grants for international species, as well as measures relating to the conservation of big game animals, like elephants and polar bears, in Canada and Africa.³⁰ He also lobbied on measures that would direct federal officials to facilitate use of and access to federal public lands for hunting and recreational shooting.³¹ As recently as the third quarter of 2017, Cassidy was lobbying Congress on legislation pertaining to monument designations and opening public land to hunting and recreational shooting.³²

the section of the regulation on which she lobbied, nor is it limited to the application of the regulation to her former client. Instead, she must recuse for two years from development and implementation of the entire regulation, subsequent interpretation of the regulation, and application of the regulation in individual cases.

Id. at 2.

²⁸ See 5 C.F.R. § 2640.102(m) (2019).

²⁹ See, e.g. National Rifle Association of America, 4th Quarter 2016 Lobbying Report, LD-2 Disclosure Form, at 13-14 (filed Jan. 18, 2017), attached as Exhibit A (disclosing Benjamin Cassidy as an NRA lobbyist and describing lobbying before Congress, BLM, and the U.S. Fish & Wildlife Service); National Rifle Association of America, 3rd Quarter 2017 Lobbying Report, LD-2 Disclosure Form, at 10 (filed Oct. 18, 2017), attached as Exhibit B (disclosing Cassidy as an NRA lobbyist and describing lobbying before Congress, Department of Interior, U.S. Fish and Wildlife Service, BLM, Department of Agriculture, and National Park Service).

³⁰ *Id.* (disclosing that Cassidy lobbied on H.R.224, Polar Bear Conservation and Fairness Act and H.R.226, African Elephant Conservation and Legal Ivory Possession Act); see also Chris D'Angelo, *This Ex-NRA Lobbyist Looks Like a Walking Ethics Violation for Zinke's Interior Department*, HUFFINGTON POST (July 6, 2018), https://www.huffingtonpost.com/entry/benjamin-cassidy-nra-interior-department_us_5b3fa5e9e4b05127ccf1bb2b.

³¹ Exhibit A, *supra* note 29, at 13-14 (disclosing that Cassidy lobbied on H.R. 528, the Recreational Fishing and Hunting Heritage and Opportunities Act, “[t]o direct Federal public land management officials to exercise their authority under existing law to facilitate use of and access to Federal public lands for fishing, sport hunting, and recreational shooting, and for other purposes”).

³² Exhibit B, *supra* note 29, at 9-10 (disclosing lobbying on, among other things, S. 33, the Improved National Monument Designation Process Act; S. 733, “A bill to protect and enhance opportunities for recreational hunting . . . and shooting”; and H.R. 1945, the Wildlife and Hunting Heritage Conservation Council Advisory Committee Act, “to establish [a committee] to advise the

Despite the ethics pledge prohibitions, almost as soon Cassidy joined Interior, he participated in particular matters involving specific parties that are directly and substantially related to the NRA, and participated in particular matters involving the same specific issue areas that he lobbied on while at the NRA. These include:

Sonoran Desert National Monument

On October 5, 2017, NRA lobbyist Susan Recce sent Cassidy an email which, taken in context, indicates that it was a follow-up to an earlier conversation or meeting between the two.³³ Recce included comments that the NRA and other organizations had submitted to BLM on a Resource Management Plan Amendment to allow recreational shooting in the Sonoran Desert National Monument.³⁴ BLM had been considering a plan to allow recreational shooting in the Sonoran Desert National Monument, and had sought public comment at various stages in the administrative process.³⁵

On October 13, 2017, Cassidy participated in a meeting titled “SDNM Discussion,” according to his official calendar, which is an apparent reference to the Sonoran Desert National Monument.³⁶

On November 17, 2017, the NRA’s Recce emailed Interior lawyer Joshua Campbell about the Sonoran Desert National Monument plan.³⁷ She communicated that “When I talked to Ben about this last month, I had the feeling that the Secretary’s office was not going to pursue the concerns that the NRA and other

Department of Interior and the Department of Agriculture on wildlife and habitat conservation, hunting, and recreational shooting”).

³³ Emails between Susan Recce and Benjamin Cassidy, Interior Staff, at 1, attached as Exhibit C. Recce begins the October 5, 2017 email to Cassidy saying, “I am so happy for you. I think you will find the experience very rewarding.” On November 17, Recce forwarded her email to Cassidy to Interior lawyer Joshua Campbell, with the message “See exchange of emails. When I talked to Ben about this last month . . .” *Id.*

³⁴ *Id.* at 3-6.

³⁵ See Sonoran Desert National Monument Target Shooting, Record of Decision/Approved Resource Management Plan Amendment, Bureau of Land Management, Lower Sonoran Field Office (March 2018), <https://bit.ly/2Fm1lOL>.

³⁶ U.S. DEPT OF INTERIOR, BENJAMIN CASSIDY OCTOBER 2017-JULY 2018 CALENDAR 3-4, <https://bit.ly/2Rsp5Cn> (“Cassidy October 2017-July 2018 Calendar”) (noting “Mtg w/ Cally re: SDNM” and “SDNM Discussion” on October 13, 2017).

³⁷ Exhibit C, *supra* note 33, at 1.

NGOs raised in our comments,” and forwarded her email to Cassidy from October 5, 2017.³⁸

On August 31, 2018, the NRA published a post on its website titled “NRA Helps to Stop BLM From Closing Monument to Target Shooting,” in which the NRA took credit for protecting recreational shooting at the Sonoran Desert National Monument.³⁹ Recce was quoted in the post saying that “[a]s a result of” the work by NRA and its allies, “the BLM backed down from the closure alternative.”⁴⁰ The post further stated:

This pressure from groups representing so many millions of Americans looks like it changed what could have been a land management decision of the BLM that would have diminished the recreational opportunities of Americans to lawfully target shoot on public lands.⁴¹

Eastern Lake Mountains

On November 2, 2017, Cassidy forwarded an email to Recce and others about BLM plans regarding recreational shooting on the Eastern Lake Mountains of Utah County, Utah, with a message stating, “Are you all aware of this? Please share any concerns or insights. Thank you. Ben.”⁴²

On November 3, 2017, Recce replied with a detailed five-paragraph critique of BLM’s actions regarding the Eastern Lake Mountains shooting plan.⁴³ Recce shared a copy of administrative comments that the NRA and its allies had submitted to BLM on the plan, and concluded her email with the message, “I appreciate your reaching out to us.”⁴⁴

On November 17, 2017, Recce forwarded Interior lawyer Josh Campbell her email exchange with Cassidy, and the message “What I wrote Ben [Cassidy]

³⁸ *Id.*

³⁹ Frank Miniter, *NRA Helps to Stop BLM From Closing Monument to Target Shooting*, NRA HUNTERS’ LEADERSHIP FORUM (Aug. 31, 2018), <https://bit.ly/2HPy2WK>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Exhibit C, *supra* note 33, at 8-13.

⁴³ *Id.* at 7-8.

⁴⁴ *Id.*

summarizes the comments that NRA and several other NGOs collectively submitted to the BLM.”⁴⁵

Cassidy’s communications with Recce regarding BLM’s shooting plans for Sonoran Desert National Monument and Eastern Lake Mountain violated the former employer provision of the ethics pledge. The communications with his former employer related to the performance of Cassidy’s official duties: using his official Interior email address, Cassidy communicated with the NRA’s lobbyist, Recce, about the NRA’s specific comments on BLM’s Sonoran Desert National Monument plan on or around October 5, 2017, and on November 2, 2017, Cassidy expressly solicited the NRA’s specific comments on the Eastern Lake Mountain plan.⁴⁶ Moreover, emails from Recce dated October 5 and November 17 reference additional meetings or communications between the NRA lobbyist and Cassidy.⁴⁷ Even if Cassidy’s communications or meetings with his former employer were open to all interested parties—and there is little indication that they were—they probably still violated the pledge, because they concerned particular matters involving specific parties: they pertained to the NRA’s specific positions and formal comments on Interior monument regulations—regulations that are focused on the rights of recreational shooters and groups who support expanded shooting access on public land specifically, like the NRA.⁴⁸

Additionally, these same emails and meetings indicate that Cassidy may have violated the former lobbyist provision of the pledge. Cassidy is barred from participating in any particular matter that he had lobbied on for the NRA, including

⁴⁵ *Id.* at 7.

⁴⁶ *See id.* at 8.

⁴⁷ *Id.* at 1.

⁴⁸ OGE DO-09-011, *supra* note 5, at 2 (“The expanded party matter definition has a two-part exception for communications with an appointee’s former employer or client, if the communication is: (1) about a particular matter of general applicability and (2) is made at a meeting or other event at which participation is open to all interested parties.”) (emphasis in original). Although administrative proceedings such as rulemakings are typically considered particular matters of general applicability, certain rulemakings and regulations are “so focused on the rights of specifically identified parties” that they are considered particular matters involving specific parties. *Id.* The particular matters on which Cassidy lobbied were focused on the interests of a discrete class of persons: the recreational hunting and shooting industry, and more specifically, those within the industry who want to expand their activities onto public land. Your office should examine the extent to which Cassidy is therefore barred from participating in regulatory issues narrowly focused on the hunting and shooting industry, including regulatory issues that are narrowly focused on hunting and shooting on public land.

any “specific issue area” in which that matter falls.”⁴⁹ It is not currently known whether Cassidy lobbied Interior on regulations pertaining to hunting on the Sonoran Desert National Monument or Eastern Lake Monuments, but he lobbied on particular matters that fell within the issue area of hunting on public land, including hunting on national monuments. Cassidy had previously lobbied Congress on legislation pertaining to monument designations and opening public land to hunting and recreational shooting, and also lobbied Interior (including BLM) on issues pertaining to “natural resources.”⁵⁰ As a result, it also appears he violated the former lobbyist provision of the pledge on October 5 and October 13, 2017 when he participated in meetings or communications pertaining to shooting plans for Sonoran Desert National Monument, and on November 2, 2017, when he communicated regarding shooting plans for Eastern Lake Mountain.

He may also have violated the pledge during other meetings:

Hunting Shooting Sports Conservation Council

On March 5, 2018, Cassidy participated in a meeting to “Discuss the Hunting Shooting Sports Conservation Council’s membership,” according to his official calendar.⁵¹ Interior Secretary Zinke created the Hunting and Shooting Sports Conservation Council to make recommendations to the Interior Secretary for the implementation of Executive Order 13443 (“Facilitation of Hunting Heritage and Wildlife Conservation”) and other orders and statutes related to hunting and shooting. Among other things, the Council is responsible for recommending policies that expand access to hunting and shooting on public land.⁵² Two top NRA lobbyists were appointed to the Council.⁵³ This meeting, which apparently resulted in the

⁴⁹ See *supra* notes 27-28.

⁵⁰ Exhibit B, *supra* note 29 (disclosing lobbying on, e.g., S. 33, the “Improved National Monument Designation Process Act”); Exhibit A, *supra* note 29, at 13-14 (disclosing that Cassidy lobbied on H.R. 528, the “Recreational Fishing and Hunting Heritage and Opportunities Act”). Cassidy lobbied Interior and BLM on the issue area of “natural resources.” *Id.* (disclosing lobbying Interior and BLM under the general issue area “NAT”).

⁵¹ Cassidy October 2017-July 2018 Calendar, *supra* note 36, at 110 (noting “Board Meeting-HSSCC” on March 5, 2018).

⁵² Press Release, U.S. Dep’t of Interior, Secretary Zinke Creates New Council for Hunting and Shooting Sports Conservation (Jan. 9, 2018), <https://on.doi.gov/2F5qEB3>; U.S. DEP’T OF INTERIOR & U.S. DEP’T OF AGRICULTURE, HUNTING & SHOOTING SPORTS CONSERVATION COUNCIL CHARTER 2 <https://bit.ly/2GaIzJL>.

⁵³ Press Release, U.S. Dep’t of Interior, Secretary Zinke Announces Members of the Hunting and Shooting Sports Conservation Council (May 22, 2018; last edited Dec. 18, 2018), <https://on.doi.gov/2DIdOuj>.

appointment of two senior NRA members,⁵⁴ may have violated the former employer provision of the pledge, since it was directly and substantially related to his former employer, the NRA. It also may have violated the lobbying provision of the pledge, since Cassidy appears to have previously lobbied Interior on the specific issue area of hunting and shooting on public lands.

International Conservation

On February 7, 2018, Cassidy attended a “Brief on International Conservation” with Secretary Zinke and four other senior Interior employees, including Doug Domenech.⁵⁵ Then, on March 13 and 15, 2018, he attended meetings with the International Wildlife Conservation Council,⁵⁶ an advisory group under the U.S. Fish and Wildlife Service that advises the Interior Secretary on anti-poaching programs, wildlife trafficking, and the conservation benefits of Americans hunting abroad.⁵⁷ These three meetings may also have violated the lobbying provision of the pledge, given Cassidy had previously lobbied on the specific issue area of international hunting and conservation.

III. Vincent DeVito

Vincent DeVito was appointed as Counselor to the Secretary for Energy Policy on April 26, 2017. He signed the Executive Order 13770 ethics pledge.⁵⁸ Prior

⁵⁴ Chris Cox and Ward “Trig” French were appointed to the council. Cox is listed on NRA lobbying forms, see Exhibits A and B, *supra* note 29, and is the executive director of the NRA’s Institute for Legislative Action (NRA-ILA). French is the national co-chair of the NRA Hunters’ Leadership Forum. Karen Mehall-Phillips, *Zinke Names NRA Leaders to Hunting and Conservation Council*, NRA HUNTERS’ LEADERSHIP FORUM (May 23, 2018), <https://bit.ly/2Sgy3bj>.

⁵⁵ Cassidy October 2017-July 2018 Calendar, *supra* note 36, at 88 (noting “Brief on International Conservation” on February 7, 2018).

⁵⁶ *Id.* at 110 (noting “Board Meeting- HSSCC” on March 5, 2018).

⁵⁷ INTERNATIONAL WILDLIFE CONSERVATION COUNCIL, <https://www.fws.gov/iwcc>. Two members of the Council are current or former NRA members. Bill Brewster served on NRA’s board. See Karen-Mehall Phillips, *HLF Member Spotlight: Bill & Suzie Brewster*, NRA AMERICAN HUNTER (Dec. 30, 2014), <https://bit.ly/2MWZFMD>. Erica Rhoad is the NRA’s Director of Hunting Policy. See Erica Rhoad, *Protecting Your Right to Hunt is More Important Than Ever*, NRA AMERICAN HUNTER (Sept. 24, 2018), <https://bit.ly/2te7aFY> (listing Erica Rhoad as Director of Hunting Policy, NRA-ILA, in byline).

⁵⁸ U.S. DEPT OF INTERIOR, SIGNED ETHICS PLEDGES, *supra* note 12, at 18-19 (signed ethics pledge of Vincent DeVito).

to joining Interior, DeVito was an attorney whose clients included the Boston-based energy company Eversource Energy.⁵⁹

When DeVito signed the ethics pledge, he agreed for two years not to participate in “any particular matter involving specific parties”—which includes a meeting relating to the performance of his official duties—directly and substantially related to former clients like Eversource Energy.⁶⁰

During his tenure at Interior, DeVito participated in particular matters related to Eversource Energy, despite the ethics pledge prohibiting this conduct. On August 23, 2017, he participated in a meeting at Interior with the Eversource Energy’s executive vice president and general counsel, Gregory Butler, Eversource’s executive vice president of enterprise energy strategy, Leon Olivier, Eversource’s vice president of business development, Michael Ausere, as well as several representatives from DONG Energy, according to his official calendar.⁶¹ According to emails between DeVito and his staff, the meeting appears to have pertained to the Bay State Wind offshore wind project, described as a collaboration between Eversource Energy and DONG Energy.⁶² Materials from the meeting include a

⁵⁹ U.S. OFFICE OF GOV’T ETHICS, EXECUTIVE BRANCH PERSONNEL, PUBLIC FINANCIAL DISCLOSURE REPORT (OGE FORM 278E) (July 21, 2017), <https://bit.ly/2FZAKYh> (new entrant report of Vincent DeVito). While this new entrant report is truncated, it is clear that Eversource is listed in the section immediately preceding section 5. Section 4 requires appointees to report “any source that paid more than \$5,000 for your personal services in any calendar year during the reporting period, which covers the preceding two calendar years and the current calendar year up to the date of filing.” *Public Financial Disclosure Guide: Your Sources of Compensation Exceeding \$5,000 in a Year (Nominee and New Entrant Reports Only)*, U.S. OFFICE OF GOV’T ETHICS, <https://bit.ly/2SuzgHs> (“OGE Public Financial Disclosure Guide”).

⁶⁰ Ethics Pledge, *supra* note 1, §§ 1(6) (barring an appointee from participating in “any particular matter involving specific parties that is directly and substantially related to [the appointee’s] former employer or former clients”), 2(s) (defining a particular matter involving specific parties to include “any meeting or other communication relating to the performance of one’s official duties with a former employer”).

⁶¹ U.S. DEPT OF INTERIOR, VINCENT DEVITO MAY-OCTOBER 2017 OFFICIAL CALENDAR 138, <https://bit.ly/2Bc7zNF> (noting “Meeting with Vincent DeVito (Counselor to Secretary Zinke – DOI / Energy Policy” on Aug. 23, 2017).

⁶² According to emails released via FOIA, the day after the meeting, on August 24, 2017, DeVito asked an assistant, James Schindler, to “have someone send me a copy of what was handed out, yesterday.” Emails of Vincent DeVito Regarding Eversource Energy/DONG Energy Presentation at 1, attached as Exhibit D. Schindler then forwarded the email to a colleague and asked her to scan a 15-page “booklet from Dong and Eversource energy” that was on Schindler’s desk, along with the “letter inside of it.” *Id.* On August 29, 2017, Schindler emailed DeVito with the message, “This is Dong’s presentation/letter, attached.” *Id.* at 9. Only the cover page of the packet is scanned, which is

letter from DONG Energy addressed to DeVito in which DONG advocates for reducing regulations to aid in the development of offshore wind farms.⁶³

DeVito's participation in this matter was related to his official duties as Senior Counselor to the Secretary for Energy Policy, a position created by Secretary Zinke to "advance the Trump Administration's goal of American energy independence."⁶⁴ In this position, DeVito is tasked with, among other things, "[i]dentifying regulatory burdens that unnecessarily encumber energy exploration development, production, transportation; and developing strategies to eliminate or minimize these burdens."⁶⁵ Consequently, DeVito violated the ethics pledge when he participated in a meeting with his former client Eversource Energy, inside of the Department of the Interior building and in his official capacity, to discuss a particular Eversource Energy wind energy project, and potentially to discuss limiting regulations to support offshore wind farms.⁶⁶

IV. Timothy Williams

Timothy Williams is the deputy director of the Office of Intergovernmental and External Affairs within Interior. He was appointed to this position in March 2017. As a senior political appointee, it is likely that he signed the Executive Order 13770 ethics pledge. According to his professional resume submitted to Interior, he was a field director for Americans for Prosperity ("AFP") from March 2015 until January 2016.⁶⁷ AFP is an advocacy organization founded and financed by the industrialist brothers Charles G. and David H. Koch.⁶⁸

titled "Bay State Wind Update, U.S. Department of Interior, August 23, 2017," and beneath the Bay State Wind logo, the statement, "A DONG Energy and Eversource Initiative." *Id.* at 14.

⁶³ *Id.* at 12-13.

⁶⁴ Press Release, U.S. Dep't of Interior, Interior Secretary Announces Vincent DeVito As Counselor for Energy Policy (May. 1, 2017), <https://on.doi.gov/2WvAXaA>.

⁶⁵ U.S. DEPT OF INTERIOR, SECRETARIAL ORDER NO. 3351, STRENGTHENING THE DEPARTMENT OF THE INTERIOR'S ENERGY PORTFOLIO, <https://on.doi.gov/2Roe8BW>.

⁶⁶ DeVito's tenure at Interior ended in August 2018. Miranda Green, *Zinke's former energy counselor at Interior takes job with offshore oil company*, THE HILL (Sept. 4, 2018), <https://bit.ly/2SeO2pg>.

⁶⁷ See FOIA Request OS-2017-00644, U.S. Dep't of Interior, *Political appointee - list and resumes*, at 63-65 <https://www.doi.gov/sites/doi.gov/files/uploads/17-00644ca.pdf> (disclosing the professional resume of Tim Williams Jr.).

⁶⁸ See, e.g., Kenneth P. Vogel, *Pence to Speak at Conservatives' Meeting Organized by Koch Brothers*, N.Y. TIMES (Aug. 4, 2017), <https://www.nytimes.com/2017/08/04/us/politics/pence-koch-conservatives-americans-for-prosperity.html>.

Williams failed to disclose his position with AFP on his new entrant financial disclosure report, and failed to disclose any compensation from that position, in apparent violation of his reporting obligations.⁶⁹ However, he did report an AFP defined contribution plan and 401k.⁷⁰

On June 14, 2017, roughly three months after his appointment, he attended a meeting via video call with Chrissy Harbin, vice president of AFP,⁷¹ Williams' former employer.⁷² According to Williams' official calendar, the purpose of the meeting was "to discuss partnering on shared priorities."⁷³

Williams' participation in this meeting appears to violate the ethics pledge's prohibition on participating in "any particular matter involving specific parties that is directly and substantially related to [the appointee's] former employer" for a period of two years after his appointment, including⁷⁴ "any meeting or other

⁶⁹ Part 1 requires appointees to report "any compensated or uncompensated position" held within the reporting period, which, for a new entrant like Williams, is the preceding two calendar years. *Public Financial Disclosure Guide: Your Positions Held Outside United States Government*, U.S. OFFICE OF GOV'T ETHICS, <https://bit.ly/2HHT21L>. Section 4 requires appointees to report "any source that paid more than \$5,000 for your personal services in any calendar year during the reporting period, which covers the preceding two calendar years and the current calendar year up to the date of filing." *Public Financial Disclosure Guide: Reporting Periods: Part 1*, U.S. OFFICE OF GOV'T ETHICS, <https://bit.ly/2MHEhL9>; *Public Financial Disclosure Guide: Your Sources of Compensation Exceeding \$5,000 in a Year (Nominee and New Entrant Reports Only)*, U.S. OFFICE OF GOV'T ETHICS, <https://bit.ly/2SuzgHs>.

⁷⁰ U.S. OFFICE OF GOV'T ETHICS, EXECUTIVE BRANCH PERSONNEL, PUBLIC FINANCIAL DISCLOSURE REPORT (OGE FORM 278E) (May 11, 2017), <https://bit.ly/2G8dN4p> (new entrant report of Timothy Williams). The start date for Williams' participation in this contribution plan was March 2015. Participation in defined contribution plans usually begins on or around the date one becomes an employee of an organization. U.S. OFFICE OF GOV'T ETHICS, PUBLIC FINANCIAL DISCLOSURE GUIDE 77 (May 2018), <https://bit.ly/2UnXHrc>.

⁷¹ U.S. DEPT OF INTERIOR, TIMOTHY WILLIAMS MAY-JULY 2017 OFFICIAL CALENDAR 40, <https://bit.ly/2SoEnNj> (noting "Meeting with Timothy Williams to discuss partnering on shared priorities (Chrissy Harbin)" on June 14, 2017).

⁷² See Ethics Pledge, *supra* note 1, § 2(j).

⁷³ *Id.* The calendar description appears to include an excerpt from an email dated June 12, 2017, where Harbin wrote: "Jason, Thank you for reaching out. Happy to meet to discuss partnering on shared priorities. Let me know when works for you and Tim." *Id.* "Jason" appears to refer to Jason Funes, an assistant in Interior's Office of Intergovernmental and External Affairs, who also participated in the meeting. *Id.*

⁷⁴ *Id.*

communication relating to the performance of one's official duties with a former employer.”⁷⁵

Williams' closed meeting by video with AFP's vice president constitutes a particular matter, since a meeting or other communication with a former employer is specifically included in the ethics pledge definition.⁷⁶ The stated purpose of the video meeting was to discuss the “shared priorities” of the government and AFP; because Williams was discussing the government's priorities, the communication related to the performance of his official duties. Williams and AFP's Harbin were the only two participants, so the meeting was not open to all interested parties.

Your office should conduct a review to determine whether this meeting by video, which itself violated the ethics pledge, resulted in additional meetings or other conduct which may have violated ethics restrictions.

V. Lori Mashburn

Lori Mashburn is the Interior Department's White House liaison, a position she has held since May 2017.⁷⁷ Prior to her work at Interior, she was an associate director for the Heritage Foundation (“Heritage”), a non-profit think tank, from October 2011 to January 2017.⁷⁸ As a political appointee at Interior, she signed the Executive Order 13770 ethics pledge on May 19, 2017.⁷⁹ Consequently, Mashburn is prohibited from participating in particular matters directly and substantially related to Heritage until May 2019.

However, Mashburn has attended multiple private events with her former employer, Heritage, in violation of her signed ethics pledge.⁸⁰ On October 16, 2017,

⁷⁵ Ethics Pledge, *supra* note 1, § 2(s).

⁷⁶ *Id.*

⁷⁷ U.S. OFFICE OF GOV'T ETHICS, EXECUTIVE BRANCH PERSONNEL, PUBLIC FINANCIAL DISCLOSURE REPORT (OGE FORM 278E) (May 23, 2017), <https://goo.gl/ryzDKP> (nominee financial disclosure report of Lori K. Mashburn).

⁷⁸ *Id.*

⁷⁹ U.S. DEPT OF INTERIOR, SIGNED ETHICS PLEDGES, *supra* note 12, at 37 (signed ethics pledge of Lori K. Mashburn).

⁸⁰ Chris D'Angelo, *Another Trump Administration Official Has An Ethics Problem*, HUFFINGTON POST (Mar. 8, 2018), <https://goo.gl/af69cW>.

she attended a private Heritage event on government property,⁸¹ which Heritage described as “an exclusive briefing for members who support Heritage with gifts of \$10,000+ annually or legacy commitments of \$200,000+.”⁸² On September 29, 2017, following a speech Secretary Zinke gave at Heritage, she attended a “Private Lunch” with high-ranking Heritage employees and others.⁸³

Both the October 16 briefing and the September 29 luncheon constituted particular matters involving specific parties requiring recusal under the ethics pledge.⁸⁴

The October 16 private briefing was a fundraising-related meeting for the benefit of and hosted by Heritage, Mashburn’s former employer; the event was designed to strengthen Heritage’s relationships with its major donors and to keep them donating. In other words, the private briefing was a particular matter focused on the interests of Heritage in receiving donations. Mashburn appears to have attended this fundraiser in her official capacity. The event, at which Secretary Zinke gave a speech, was listed on Secretary Zinke’s official calendar with a list of Interior staffers who were to accompany him.⁸⁵ The meeting was not open to all interested parties, since attendance was apparently limited to Heritage staff, its major donors, and Interior officials.

The September 29 private luncheon, held two weeks before the fundraising event, was also a meeting relating to the performance of her official duties with her former employer, Heritage. The luncheon was a private portion of a larger public event hosted by Heritage, where Secretary Zinke gave a “major policy speech” which “outlin[ed] the Administration’s ‘All of the above’ energy strategy,” and which was focused “specifically on the importance of American energy production and how the federal government can be a better business partner.”⁸⁶ Secretary Zinke’s calendar

⁸¹ U.S. DEP’T OF INTERIOR, SECRETARY RYAN ZINKE’S OFFICIAL CALENDAR, <https://on.doi.gov/2tbE2iE> (noting “Remarks to Heritage” in the Eisenhower Executive Office Building South Court Auditorium on Oct. 16, 2017, with Mashburn being one of six Interior employees accompanying the Secretary).

⁸² *Agenda*, HERITAGE FOUNDATION PRESIDENT’S CLUB MEETING 2017, <https://www.heritagepcm.org/2017dc/agenda>.

⁸³ FOIA Response 17-00413, U.S. Dep’t of Interior, *A Vision for American Energy Dominance, Liberating American from Bureaucracy*, at 501-03, <https://www.doi.gov/sites/doi.gov/files/uploads/17-00413ca.pdf> (schedule of events for Heritage Foundation-hosted event).

⁸⁴ Ethics Pledge, *supra* note 1, § 2(s).

⁸⁵ *See supra* note 81.

⁸⁶ *See* FOIA Response 17-00413, Department of Interior, *supra* note 83, at 501.

describes the luncheon as a “Private Lunch,” so it stands to reason that the event, attended by senior Interior staff, senior Heritage staff, and members of lobbying, legal, and government groups invested in the Administration’s “energy dominance” agenda, was not open to all interested parties.

Mashburn’s attendance at these events with her former employer would therefore violate the former employer provision of the ethics pledge.⁸⁷

VI. Todd Wynn

Todd Wynn is the Director of the Office of Intergovernmental and External Affairs within Interior. According to his financial disclosure, he was a member of the board of trustees for the non-profit Council of State Governments’ 21st Century Foundation prior to joining government, until October 11, 2017. Wynn was appointed on October 15, 2017, and signed the Executive Order 13770 ethics pledge a day later.⁸⁸

On December 21, 2017, Wynn communicated with Rich Lindsey,⁸⁹ a Council of State Governments representative described as a “Policy Consultant” on the group’s website.⁹⁰ The calendar entry does not disclose the purpose of the meeting.

Wynn’s financial disclosure lists him as a member of the board of trustees of the Council of State Governments, making the organization a former employer within the meaning of the ethics pledge.⁹¹ As a result, Wynn is barred from participating in any closed meeting or other communication with Council of State

⁸⁷ The ethics pledge excepts events “open to all interested parties.” Ethics Pledge, *supra* note 1, § 2(s). Neither the luncheon nor the briefing meets that exception due to their private nature. The luncheon was labeled as “private” on the Interior itinerary, in contrast to the larger “public” event of which it was a part. The “exclusive” briefing was only open to those who donated a certain amount to Heritage.

⁸⁸ U.S. DEPT OF INTERIOR, SIGNED ETHICS PLEDGES, *supra* note 12, at 60 (signed ethics pledge of Todd Wynn).

⁸⁹ U.S. DEPT OF INTERIOR, TODD WYNN OCTOBER-DECEMBER 2017 OFFICIAL CALENDAR 61, <https://bit.ly/2TqfQo7> (noting “Call with Rich Lindsey” on Dec. 21, 2017).

⁹⁰ Staff Directory, CSG WEST (accessed Feb. 1, 2019), <https://www.csgwest.org/contact>. Lindsey is also described as the head of CSG’s “Energy Committee.” *Staff Assignments*, CSG WEST (accessed Feb. 1, 2019), <https://www.csgwest.org/about/staff.aspx>.

⁹¹ U.S. OFFICE OF GOV’T ETHICS, EXECUTIVE BRANCH PERSONNEL, PUBLIC FINANCIAL DISCLOSURE REPORT (OGE FORM 278E) (Nov. 3, 2017), <https://bit.ly/2MYwKIg> (new entrant report of Todd Wynn). “Former employer” is defined to include “any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner.” Ethics Pledge, *supra* note 1, § 2(j).

Governments relating to the performance of his official duties.⁹² This call may have been related to government business, since the appointment was listed on Wynn's official calendar. Your office should investigate whether this or other communications with representatives from an organization where Wynn served as a trustee are sufficiently related to his official duties as to constitute an ethics violation.

Conclusion

On February 23, 2018, CLC filed a complaint with your office regarding an apparent violation of 18 U.S.C. § 208 and other ethics provisions by former Interior Secretary Ryan Zinke.⁹³ In that complaint, we highlighted numerous ethics violations that, when taken together, elucidate a pattern of impropriety on the part of former Secretary Zinke. It appears that former Secretary Zinke's disregard for ethical norms has sent a signal to Interior employees that skirting ethical rules, including violating a signed ethics pledge, is tolerated at the Department of the Interior.

At the very least, the apparent pattern of ethical misconduct occurring at Interior demonstrates a weak application of the ethical standards that demand impartiality while performing official duties.⁹⁴ The Standards of Ethical Conduct require an employee to recuse from party matters that would cause a reasonable person to question her impartiality if she were to participate.⁹⁵ The Standards of Conduct further provide that employees must endeavor to avoid any actions creating even the appearance that they are violating ethical standards.⁹⁶ It seems implausible that a reasonable person would not be concerned about the impartiality of these senior Interior employees, or at least the appearance of impartiality, given their participation in matters that stand to benefit their former employers and lobbying clients.

⁹² Ethics Pledge, *supra* note 1, §§ 1(6) (barring an appointee from participating in "any particular matter involving specific parties that is directly and substantially related to [the appointee's] former employer or former clients"), 2(s) (defining a particular matter involving specific parties to include "any meeting or other communication relating to the performance of one's official duties with a former employer").

⁹³ *Complaint Against Secretary Ryan Zinke to Inspector General*, CAMPAIGN LEGAL CTR. (Feb. 23, 2018), <https://goo.gl/MH7JiC>.

⁹⁴ 5 C.F.R. § 2635.502 (2019).

⁹⁵ *Id.*

⁹⁶ 5 C.F.R. § 2635.101(a)(14) (2019).

In light of the troubling pattern emerging at the Interior Department, we urge your office to investigate these ethics violations and report any adverse findings for appropriate action.

Respectfully submitted,

_____/s/_____
Brendan M. Fischer
Director, Federal Reform

_____/s/_____
Delaney N. Marsco
Ethics Counsel

cc: Emory A. Rounds III
Director
U.S. Office of Government Ethics